

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

v.

JOSE JESUS ALVAREZ,  
Defendant.

No. CR-05-2032-FVS  
CR-05-2034-FVS

ORDER

**THESE MATTERS** came before the Court for scheduled pretrial conferences on October 13, 2005. Before the Court were the Defendant's Motion to Suppress Statements and the Defendant's Motion to Dismiss. The Defendant was present and represented by Timothy Cotterell. Assistant United States Attorney James Hagarty appeared on behalf of the Government. This Order is intended to memorialize the Court's oral ruling made in open court.

**BACKGROUND**

The Defendant was arrested on January 13, 2005, and interviewed by ATF Special Agent C. Todd Smith and LEAD Task Force Detective Mike Akins. The Defendant was then placed in jail at the Grandview Police Department. Detective Akins prepared a Declaration of Probable Cause on January 14, 2005. Superior Court Judge James Lust found probable cause on January 16, 2005. The Defendant made a preliminary appearance in Yakima County Jail on January 18, 2005, before Judge

1 R.N. Hackett. Monday, January 17, 2005, was a holiday. On January  
2 20, 2005, the Defendant was arraigned on state charges, including  
3 four counts of delivery of a controlled substance, methamphetamine,  
4 two counts of second-degree unlawful possession of a firearm, and one  
5 count of delivery of a controlled substance, methamphetamine. At  
6 that time, the court set an omnibus hearing for February 24, 2005,  
7 and a trial date for March 7, 2005. On February 24, 2005, the case  
8 was continued pursuant to a joint order. On April 28, 2005, the case  
9 was dismissed without prejudice in state court on the basis that the  
10 Defendant was going to be charged in federal court for the same  
11 underlying conduct. On April 29, 2005, the Defendant was indicted in  
12 federal court on the present charges.

### 13 **DISCUSSION**

#### 14 ***A. Motion to Dismiss With Prejudice***

15 The Defendant argues his Speedy Trial clock began running on the  
16 date of his arrest on January 13, 2005, and that he should receive  
17 credit under the Speedy Trial Act for the 34 days he spent in state  
18 custody before he signed his first continuance. The Defendant also  
19 argues the Indictment should be dismissed with prejudice because the  
20 state authorities did not comply with their duty to bring the  
21 Defendant before a judge within 48 hours of his arrest.<sup>1</sup>

22 A defendant's speedy trial right under the Sixth Amendment is  
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24 <sup>1</sup> Washington Superior Court Criminal Rule 3.2.1 provides  
25 that a person who is arrested shall have a judicial determination  
26 of probable cause no later than 48 hours following the person's  
arrest, unless probable cause has been determined prior to such  
arrest.

1 not activated until the date of federal "accusation." *United States*  
2 *v. Cordova*, 537 F.2d 1073, 1075 (9th Cir. 1976). "One becomes  
3 'accused' when there is 'either a formal indictment or information or  
4 else the actual restraints imposed by arrest and holding to answer a  
5 criminal charge.'" *United States v. Romero*, 585 F.2d 391, 398 (9th  
6 Cir. 1978) (quoting *United States v. Marion*, 404 U.S. 307, 320  
7 (1971)). The general rule is that the date of a defendant's state  
8 arrest does not initiate federal prosecution for the purpose of the  
9 defendant's speedy trial right. *United States v. Soto*, 1 F.3d 920,  
10 923 (9th Cir. 1993). However, the "Speedy Trial Act time periods may  
11 be triggered by state detentions that are merely a ruse to detain the  
12 defendant solely for the purpose of bypassing the requirements of the  
13 Act." *United States v. Benitez*, 34 F.3d 1489, 1494 (9th Cir.  
14 1994) ("Although the law provides that a federal arrest does not occur  
15 when no formal federal charges are filed, this rule is not absolute.  
16 The Speedy Trial Act would lose all force if federal criminal  
17 authorities could arrange with state authorities to have the state  
18 authorities detain a defendant until federal authorities are ready to  
19 file criminal charges.").

20 In the present case, even though the federal indictment is based  
21 on the same conduct as that involved in the state prosecution, the  
22 Defendant cannot receive credit under the Speedy Trial Act for the 34  
23 days he spent in state custody unless he can show the state arrest  
24 was collusive and "constituted a mere temporary device used to  
25 restrain [the Defendant] until federal authorities might choose to  
26 prosecute." *Cordova*, 537 F.2d at 1076 (citations and quotations

1 omitted).

2 "A finding of collusion requires proof of a deliberate intent to  
3 deprive a defendant of her federal procedural rights." *United States*  
4 *v. Michaud*, 268 F.3d 728, 735 (9th Cir. 2001). The mere suspicion of  
5 collusion is insufficient. *Id.* Here, as evidence of collusion, the  
6 Defendant points to the "heavy involvement by ATF in this case" and  
7 the fact that the federal Indictment was filed on March 15, 2005, and  
8 a warrant for the Defendant's arrest was issued on March 16, 2005,  
9 but the Defendant remained in state custody and was not arraigned in  
10 federal court until April 29, 2005. Based on these facts, the  
11 Defendant argues the "federal authorities had planned on indicting  
12 him from the time he was arrested." "However, the fact that federal  
13 authorities actively participate in an investigation does not mandate  
14 the application of the Speedy Trial Act." *United States v. Benitez*,  
15 34 F.3d 1489, 1493 (9th Cir. 1994) (citations omitted) (holding that  
16 arrest by federal authorities who immediately relinquished control to  
17 state officials for state prosecution did not trigger the Speedy  
18 Trial Act).

19 Since the Defendant offers no evidence of actual collusion  
20 between the state and federal authorities, the Court determines the  
21 Defendant's rights were not infringed by impermissible collusion.  
22 Therefore, the date of the Defendant's state arrest did not initiate  
23 federal prosecution for the purpose of the Defendant's speedy trial  
24 right. See *Soto*, 1 F.3d at 923. Furthermore, since the Court does  
25 not find any evidence of actual collusion between the state and  
26 federal authorities, there is no basis to contribute the state court

1 delay in bringing the Defendant before a judge within 48 hours of his  
2 arrest to the federal agents. See *Michaud*, 268 F.3d at 734 n. 2 (9th  
3 Cir. 2001) ("Although the state police did not comply with their  
4 constitutional duty to bring Michaud before a magistrate within 48  
5 hours of her arrest ... this delay cannot be attributed to the  
6 federal agents and considered for purposes of § 3501(c) absent  
7 evidence of collusion."). Accordingly, the Defendant's motion to  
8 dismiss for speedy trial violations is denied.

9 ***B. Motion to Suppress Statements***

10 The Government contends, and the Defendant does not disagree,  
11 that the Defendant was advised of his *Miranda* rights after his arrest  
12 and then agreed to speak to officers. Thereafter, the Defendant  
13 provided a statement. The Defendant now moves to suppress these  
14 statements. However, he does not offer any specific basis upon which  
15 the Court should suppress the Defendant's statements. The Defendant  
16 does not allege an illegal arrest, an arrest without probable cause,  
17 or that he was not advised of his *Miranda* warnings. Moreover, the  
18 Defendant does not allege that he did not understand those warnings  
19 for some reason or that he did not waive those rights when he agreed  
20 to speak to the officers and provide a statement. After review of  
21 the arrest documents and the officers' reports, the Court determines  
22 the Defendant's statements were voluntary. Accordingly, the  
23 Defendant's motion to suppress is denied.

24 **IT IS HEREBY ORDERED:**

25 1. The Defendant's Motion to Dismiss (**Ct. Rec. 49 in CR-05-**  
26 **2032-FVS; Ct. Rec. 44 in CR-05-2034-FVS**) is **DENIED**.

